

Remarks**I. Status of the claims**

Claims 1, 4, 7-9, 11, 12, 23, 28-31, and 33-36 are pending and stand rejected.

II. Non-Statutory Double Patenting

Claims 1, 4, 7-9, 11-12, 23, 28-31 and 33-36 stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-22 of U.S. Patent Application No. 11/473,386 (“the ‘386 application”). A Terminal Disclaimer over the ‘386 application is being filed concurrently herewith, thereby obviating this rejection.

Claims 1, 4, 7-9, 11-12, 23, 28-31 and 33-36 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-28 of U.S. Patent No. 7,090,867 (the ‘867 patent). A Terminal Disclaimer over the ‘867 patent is being filed concurrently herewith, thereby obviating this rejection.

Pursuant to C.F.R. § 1.116, Applicants submit that the filing of the Terminal Disclaimers places this application in better form for appeal.

III. Notice of Appeal

A Notice of Appeal and the required fee are submitted concurrently herewith.

IV. Conclusion

If a telephone conference would be helpful, the Examiner is invited to call the undersigned at 617-832-1223. Applicants believe that the required fees have been submitted herewith.

Nevertheless, the Commissioner is hereby authorized to charge any underpayment, or credit any overpayment, to **Deposit Account No. 06-1448, Reference SMI-005.01.**

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Respectfully submitted,

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